

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

IN RE:

MARTIN JAMES DEKOM, SR.,

CASE NO.: 19-30082-KKS

CHAPTER: 13

Debtor.

**ORDER DENYING DEBTOR'S NOTICE AND MOTION TO STAY
PENDING APPEAL (DOC. 251)**

THIS MATTER is before the Court on Debtor's *Notice and Motion to Stay Pending Appeal* ("Stay Motion," Doc. 251) and the response filed on behalf of Nationstar Mortgage, LLC ("Nationstar;" Doc. 267). The Stay Motion is due to be denied for the reasons set forth below.

BACKGROUND

This case is a two-party dispute between Debtor and Nationstar. In short, Nationstar holds a final judgment of foreclosure ("Foreclosure Judgment") on property Debtor owns in New York ("Property"). Debtor has not made a payment to Nationstar since 2011. He and Nationstar have been embroiled in litigation over the Property since 2013. During this Chapter 13 case, Debtor has filed four pleadings objecting to Nationstar's claim ("Objections").¹ The gravamen underlying the

¹ Docs. 63, 65, 76 and 158.

Objections is Debtor's assertion that Nationstar's Foreclosure Judgment is not final, and that this Court should revisit the validity of the documents underlying the Foreclosure Judgment, the amount of Nationstar's claim, and Nationstar's standing to appear in this case.

The Court had scheduled several matters in this case to be heard on January 22, 2020, including Nationstar's amended motion for relief from stay and this Court's Order to Show Cause.² Although it was unnecessary to schedule a hearing on the Objections, in order to bring all pending matters before the Court on the same date the Court noticed the Objections for preliminary, non-evidentiary hearing on January 22, 2020.³

At the January 22 hearing the Court announced that the Objections were overruled as to Nationstar's standing and the validity of Nationstar's Foreclosure Judgment under the Rooker-Feldman doctrine and *res judicata*. The Clerk noted on the Docket that the Court had overruled, in part, the Objections.⁴ Debtor filed his *Notice of Appeal and Statement of Election* (Doc. 235) on January 30, 2020, addressed to the

² Docs. 176, 200 and 209; *Order for Martin James Dekom, Sr. to Appear and Show Cause as to Why: 1) He should Not be Declared a Vexatious Litigant; 2) Fed. R. Bankr. P. 9011 Sanctions Should Not Be Imposed; and 3) This Case Should Not Be Dismissed with Prejudice* (Doc. 215).

³ Doc. 215.

⁴ Doc. 233.

Clerk's Docket Entry;⁵ later the same day the Court entered a written order confirming its oral ruling and overruling, in part, Debtor's Objections to Nationstar's claim.⁶ The instant Stay Motion followed.

Having determined that no hearing is needed on the Stay Motion, the Court issues the instant Order.⁷

DEBTOR HAS NOT MADE THE REQUISITE SHOWING FOR A STAY PENDING APPEAL

A stay pending appeal under Fed. R. Bankr. P. 8007 is an "extraordinary remedy" granted only if the movant shows: "(1) a substantial likelihood [of success] on the merits . . . (2) a substantial risk of irreparable injury . . . unless the stay is granted; (3) no substantial harm to other interested persons; and (4) no harm to the public interest."⁸ The Stay Motion may be granted only if it meets all the foregoing requirements. It meets none.

The Appeal does not have a substantial probability of success

Debtor raises essentially two arguments in support of the Stay Motion; one procedural and one on the merits.

⁵ As Nationstar points out in its response to the Stay Motion, an attempt to appeal from a notation of a ruling on a Docket may not truly be an appeal at all.

⁶ Doc. 237. That Order preserves Debtor's Objections to the amount of Nationstar's claim.

⁷ The Stay Motion is scheduled for hearing on Wednesday, February 12 (Doc. 258). Debtor has urged this Court to rule prior to that hearing (Doc. 251, p. 4).

⁸ Fed. R. Bankr. P. 8007; *In re Woide*, 730 F. App'x 731, 737 (11th Cir.), *cert. denied sub nom. Woide v. Fed. Nat. Mortg. Ass'n*, 139 S. Ct. 481 (2018).

Debtor's procedural argument is that even though he attended the hearing and attempted to argue the Objections, he was not provided adequate notice that his Objections would be considered at the January 22, 2020 hearing.⁹ This argument fails. Whether the Objections were barred by the Rooker-Feldman doctrine and *res-judicata* are purely legal issues on which the Court had discretion to rule without a hearing.¹⁰ So, inadequate notice is not adequate basis to grant the Stay Motion.

On the merits, Debtor argues that the Rooker-Feldman doctrine and *res judicata* are inapplicable to the Nationstar Foreclosure Judgment. This argument also fails. Another court, the U.S. District Court for the Eastern District of New York ("EDNY"), has already ruled that *res judicata* and the Rooker-Feldman doctrine bar Debtor from collaterally attacking the validity of the Foreclosure Judgment.¹¹ In 2017, long after the Foreclosure Judgment became final, Debtor brought a civil action against Nationstar and others in which, among other things, he challenged the validity of Nationstar's Final Judgment on grounds

⁹ Debtor also claims that the notice of hearing was mailed on Sunday, January 19. Doc. 251, p. 2. That claim is patently false. The Docket shows that the BNC mailed the notice of hearing on Saturday, January 18, 2020. Doc. 217. Additionally, Debtor did not raise lack of adequate notice at the January 22 hearing. *See, e.g., Access Now, Inc. v. Sw. Airlines Co.*, 385 F.3d 1324, 1331 (11th Cir. 2004) (declining to consider an issue "raised for the first time in an appeal.") (*quoting Walker v. Jones*, 10 F.3d 1569, 1572 (11th Cir.1994)).

¹⁰ *See In re Livdahl*, 2019 WL 1615282, at *6 (B.A.P. 9th Cir. Apr. 15, 2019).

¹¹ *Dekom v. Fannie Mae, et. al.*, Case No.: 2:17-cv-02712-RRM-ARL (E.D.N.Y. 2017).

identical to those he raises in the Objections.¹² The EDNY held that Debtor's challenges to the Final Judgment were barred by the Rooker-Feldman doctrine and *res judicata* and dismissed the case.¹³ The EDNY denied Debtor's motion for reconsideration and certified that any appeal of its ruling would "not be taken in good faith."¹⁴ Debtor nonetheless filed an appeal, and attempts to attack the Final Judgment again in this Court. This effort is barred by collateral estoppel.¹⁵

Collateral estoppel prevents relitigation of issues that were already decided in a prior suit. It applies where (1) both suits concern the same issue; (2) the issue was actually litigated in the prior suit; (3) the determination of the issue was a critical and necessary part of the judgment in the prior suit; and (4) the party against whom the earlier judgment is asserted had a full and fair opportunity to litigate the issue in the prior suit.¹⁶ Here, Debtor asks this Court to review and rule on the same issues that he litigated in the Eastern District of New York: whether the Rooker-Feldman doctrine and *res judicata* bar relitigation of

¹² *Id.* at Doc. 230, *Report and Recommendation*, pp. 7-11.

¹³ *Order, Id.* at Doc. 234. *Id.* at Doc. 249, p. 2. *See, Dekom v. Fannie Mae*, No. 19-3425 (2nd Cir. docketed Oct. 21, 2019).

¹⁴ *Notice and Motion to Reconsider Order Denying Equal Protection and Granting Motions to Dismiss, Id.* at Doc. 235; *EDNY Memorandum and Order, Id.* at Doc. 249, p. 2.

¹⁵ *Notice of Appeal, Id.* at Doc. 250; *Dekom v. Fannie Mae*, No. 19-3425 (2nd Cir. docketed Oct. 21, 2019).

¹⁶ *Citibank, N.A. v. Data Lease Fin. Corp.*, 904 F.2d 1498, 1501 (11th Cir. 1990).

issues encompassed in the Foreclosure Judgment. The EDNY docket shows that Debtor had, and vigorously availed himself of, a full and fair opportunity to litigate the issues of the Rooker-Feldman doctrine and *res judicata*.¹⁷ Because of the adverse ruling against him in EDNY, Debtor is precluded from relitigating these issues under the guise of his Objections to Nationstar's claim.¹⁸

Debtor cannot demonstrate a substantial risk of irreparable injury if his request for a stay is denied

Debtor asserts that absent a stay he will suffer violations of his procedural and substantive due process rights and the loss of the Property. Neither contention demonstrates a substantial risk of irreparable injury. Debtor has had the benefit of procedural due process for many years in numerous courts. Further, an alleged injury—here, possible loss of the Property at foreclosure sale—that can be measured and compensated by money is not irreparable.¹⁹

¹⁷ *Dekom v. Fannie Mae, et. al.*, Case No.: 2:17-cv-02712-RRM-ARL, Doc. 233, *Objections to Report and Recommendation* (E.D.N.Y. Feb. 26, 2019).

¹⁸ The fact that Debtor has filed an appeal of the EDNY order denying Debtor's motion for reconsideration is immaterial to this result. "[A] final judgment retains all of its collateral estoppel consequences notwithstanding the pendency of an appeal." *In re Porcelli*, 325 B.R. 868, 872 (Bankr. M.D. Fla. 2005). *See also Deposit Bank of Frankfort v. Bd. of Councilmen of City of Frankfort*, 191 U.S. 499, 520 (1903).

¹⁹ The factors considered when considering a stay pending appeal "overlap' the familiar ones courts look to in ruling on applications for preliminary injunctions." *In re Revel AC, Inc.*, 802 F.3d 558, 568 (3d Cir. 2015) (*citing Nken v. Holder*, 556 U.S. 418, 434 (2009)). *Sampson v. Murray*, 415 U.S. 61, 90 (1974) ("Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay are not enough.").

**There is a substantial risk of harm to Nationstar if the
Court grants a stay**

Debtor's current Chapter 13 Plan proposes no payments at all until month 24, by which time he proposes to sell the Property and pay Nationstar a lump sum of \$544,411.15.²⁰ Debtor has not been paying for the Property's maintenance, insurance, or real estate taxes; in fact, his testimony at the January 22 hearing was that Nationstar would continue advancing money for the real estate taxes. This would put the risk of loss entirely on Nationstar, and this risk increases the longer a resolution is delayed. Granting a stay pending appeal under these facts would provide Debtor an inappropriate vehicle to continue owning and enjoying non-homestead real property while languishing, essentially payment free, in Chapter 13 with no confirmable plan in sight.

A stay would inflict harm on the public interest

Chapter 13 is entirely voluntary. Its purpose is to allow an honest but unfortunate debtor a chance develop a repayment plan under court supervision and protection to alleviate a debt burden that exceeds the debtor's regular income.²¹ The facts of this case do not fit the purpose of

²⁰ *CHAPTER 13 PLAN, Sixth Amended* (Doc. 244).

²¹ *In re Wilson*, 168 B.R. 260, 262 (Bankr. N.D. Fla. 1994), citing *In re St. Laurent*, 991 F.2d 672, 680 (11th Cir.1993) (discharge is reserved only for the "honest, but unfortunate" debtor).

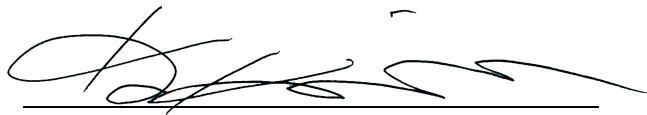
Chapter 13. Given Debtor's litigation history and the fact that this bankruptcy is effectively a two-party dispute between Debtor and Nationstar, it is apparent that Debtor is attempting to manipulate the Bankruptcy Code, and this Court, in another effort to relitigate the Foreclosure Judgment. This is not the purpose of Chapter 13 and is most certainly not justification for a stay pending appeal.

For the reasons stated, it is

ORDERED:

1. The *Notice and Motion to Stay Pending Appeal* (Doc. 251) is DENIED.
2. The hearing on the Stay Motion, currently scheduled for February 12, 2020, is CANCELED.

DONE AND ORDERED on February 11, 2020.



KAREN K. SPECIE
Chief U. S. Bankruptcy Judge

cc: all parties in interest, including
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